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BAKER BOTTS, LLP			GILLIS, BRIAN J	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

debbie.allen@bakerbotts.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/761,783	<b>Applicant(s)</b> JAWAD PIRZADA ET AL.	
	<b>Examiner</b> Brian J. Gillis	<b>Art Unit</b> 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8-14, 23, and 24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed information handling system of claims 8-14, 23, and 24 is software per se. Please refer to MPEP 2106.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Rusch (US Patent #6,801,777).

(Claim 1 discloses) a method for dynamically switching between network protocols, the method comprising: conducting network communications from a client system via a first network protocol (Rusch shows a connection to the first network is made (Figure 2, column 6, lines 39-41 and 55-65).); receiving, in the client system, performance data for the first network protocol (Rusch shows the device receives performance information regarding the network (column 6, lines 39-54).); receiving, in

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the client system, performance data for a second network protocol available to the client system (Rusch shows the device receives data for other networks (column 6, lines (39-54).); while conducting network communications with the first network protocol, automatically determining whether switching from the first network protocol to the second network protocol would improve performance for the client system (Rusch shows the device monitors the connections and makes a determination to switch networks (column 6, line 66 – column 7, line 6).); and in response to determining that switching to the second network protocol would cause improved performance for the client system, automatically switching from the first network protocol to the second network protocol (Rusch shows a automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6)).

(Claim 2 discloses) the method of claim 1, wherein the first network protocol and second network protocol comprise a wireless network protocol selected from the group consisting of 802.11a, 802.11b and 802.11g (Rusch shows the capability to use the IEEE wireless standards (column 2, lines 52-55)).

(Claim 3 discloses) the method of claim 1, further comprising: receiving, in the client system, performance data for a third network protocol available to the client system (Rusch shows the device receives information on various networks available (column 6, lines 39-54).); while conducting network communications with the first network protocol automatically determining whether switching from the first network protocol to the third network protocol would improve performance for the client system (Rusch shows the device monitors the connections and makes a determination to

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switch networks (column 6, line 66 – column 7, line 6).); and in response to determining that switching to the third network protocol would cause improved performance for the client system, automatically switching from the first network protocol to the third network protocol (Rusch shows a automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6)).

(Claim 4 discloses) the method of claim 1, further comprising: determining that switching to the second network protocol would cause improved performance based on energy consumption for the client system (Rusch shows the device makes a switch based on power consumption (column 5, line 55 – column 6, line 12).); and switching from the first network protocol to the second network protocol (Rusch shows the device switches networks (column 6, line 66 - column 7, line 6)).

(Claim 5 discloses) the method of claim 1, further comprising: storing performance data for the first network protocol and second network protocol in the client system (Rusch shows the system processor obtains and stores performance data for the networks (column 3, lines 45-65 and column 5, lines 1-3).); and accessing the performance data for the first network protocol and second network protocol (Rusch shows the data obtained is used by the device (column 3, lines 45-65, and column 5, lines 1-3)).

(Claim 6 discloses) the method of claim 1, wherein performance data for the first network protocol and second network protocol comprises signal quality data (Rusch shows quality of service data for the network is stored (column 3, lines 45-65)).

(Claim 7 discloses) the method of claim 1, wherein performance data for the first

network protocol and second network protocol comprises signal strength data (Rusch shows quality of service data for the network is stored (column 3, lines 45-65)).

(Claim 8 discloses) an information handling system for dynamically switching between network protocols, the information handling system comprising: a receiver module operable to receive communications governed by at least two network protocols (Rusch shows receiving communications from networks (Figure 1, 106).); a performance data module associated with the receiver module, the performance data module operable to obtain network performance data for the at least two network protocols (Rusch shows the device monitors the connections and makes a determination to switch networks (column 6, line 66 – column 7, line 6).); and a dynamic switching module associated with the performance data module, the dynamic switching module operable to monitor performance data and dynamically switch between network protocols based on the network performance data (Rusch shows a automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6)).

(Claim 9 discloses) the information handling system of claim 8, further comprising a performance data storage module operable to store performance data, the performance data storage module associated with the performance data module and the dynamic switching module (Rusch shows the obtained network performance data is stored (Figure 1, column 5, lines 1-3)).

(Claim 10 discloses) the information handling system of claim 9, wherein the performance data storage module further comprises at least one register, the at least

one register operable to store performance data (Rusch shows the data is stored in a storage element (column 5, lines 1-3)).

(Claim 11 discloses) the information handling system of claim 8, wherein the dynamic switching module further comprises: a network protocol setting module operable to identify wireless communications according to the at least two network protocols (Rusch shows receiving communications from networks (Figure 1, 106).); a performance data comparison module operable to compare performance data for the at least two network protocols, and determine if switching to a second network protocol would improve network performance (Rusch shows the device monitors the connections and makes a determination to switch networks (column 6, line 66 – column 7, line 6).); and the dynamic switching module operable to switch to a second network protocol if the performance data comparison module determines that switching to a second network protocol would cause improved performance (Rusch shows a automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6)).

(Claim 12 discloses) the information handling system of claim 8, wherein the at least two network protocols comprise wireless network protocols selected from the group consisting of 802.11a, 802.11b and 802.11g (Rusch shows the capability to use the IEEE wireless standards (column 2, lines 52-55)).

(Claim 13 discloses) the information handling system of claim 8, wherein the performance data module further comprises a signal quality indicator operable to monitor signal quality associated with communications according to each of the at least

two network protocols (Rusch shows quality of service data for the network is stored (column 3, lines 45-65)).

(Claim 14 discloses) the information handling system of claim 8, wherein the performance data module further comprises a signal strength indicator operable to monitor received signal strength of communications according to each of the at least two network protocols (Rusch shows quality of service data for the network is stored (column 3, lines 45-65)).

(Claim 15 discloses) a wireless network access card for dynamically switching between network protocols, the wireless network access card comprising: a performance data receiver module, operable to receive performance data for communications according to at least two network protocols (Rusch shows the device receives data from the networks (Figure 1, 106).); and a dynamic switching module associated with the performance data receiver module, the dynamic switching module operable to monitor and compare performance data of at least two network protocols and dynamically switch network protocols based on performance data (Rusch shows a automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6)).

(Claim 16 discloses) the wireless network access card of claim 15, the dynamic switching module further comprising: a network protocol setting module operable to identify wireless communications according to the at least two network protocols (Rusch shows receiving communications from networks (Figure 1, 106).); a performance data comparison module operable to compare performance data for the at least two network



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protocols and determine if switching to a second network protocol would improve performance (Rusch shows the device monitors the connections and makes a determination to switch networks (column 6, line 66 – column 7, line 6).); and the dynamic switching module operable to switch to a second network protocol if the performance data comparison module determines that switching to a second network protocol would cause improved performance (Rusch shows a automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6)).

(Claim 17 discloses) the wireless network access card of claim 15, further comprising at least one storage register, the at least one storage register associated with the performance data receiver module and the dynamic switching module and operable to receive performance data from the performance data receiver module and provide performance data to the dynamic switching module (Rusch shows the obtained network performance data is stored in a storage element (Figure 1, column 5, lines 1-3)).

(Claim 18 discloses) the wireless network access card of claim 15, wherein the performance data receiver module further comprises: a signal quality indicator operable to monitor signal quality associated with communications according to each of the at least two network protocols (Rusch shows quality of service data which can include signal quality for the network is stored (column 3, lines 45-65).); and a signal strength indicator operable to monitor received signal strength associated with communications according to each of the at least two network protocols (Rusch shows quality of service data which can include signal strength for the network is stored (column 3, lines 45-65)).

(Claim 19 discloses) the wireless network access card of claim 15, wherein the at least two network protocols comprise wireless network protocols selected from the group consisting of 802.11a, 802.11b and 802.11g (Rusch shows the capability to use the IEEE wireless standards (column 2, lines 52-55)).

(Claim 20 discloses) the wireless network access card of claim 15, further comprising a receiver module operable to receive communications governed by the at least two network protocols (Rusch shows the devices receives data for various networks (column 6, lines (39-54))).

(Claim 21 discloses) the method of claim 1, further comprising: receiving input from a user regarding one or more performance factors to be used in determining whether to dynamically switch between network protocols (Rusch shows the user inputs preferences into the device (column 5, lines 55 – column 6, line 12).); and determining whether to switch from the first network protocol to the second network protocol based at least on the user input regarding the one or more performance factors (Rusch shows the network switch is based on the user preferences (column 7, lines 1-6)).

(Claim 22 discloses) the method of claim 21, wherein the input received from the user regarding one or more performance factors comprises at least one of: a selection from a set of performance factors of one or more performance factors to be used in determining whether to dynamically switch between network protocols; and a ranking of one or more performance factors (Rusch shows the user is able to select a factor to be used in determining a network switch (column 5, line 55 – column 6, line 12)).

(Claim 23 discloses) the information handling system of claim 8, wherein the dynamic switching module is operable to dynamically switch between network protocols based on the network performance data and input from a user regarding one or more performance factors to be used in determining whether to dynamically switch between network protocols (Rusch shows the network switch is based on the network data and user preferences (column 7, lines 1-6)).

(Claim 24 discloses) the information handling system of claim 23, wherein the input received from the user regarding one or more performance factors comprises at least one of: a selection from a set of performance factors of one or more performance factors to be used in determining whether to dynamically switch between network protocols; and a ranking of one or more performance factors (Rusch shows the user is able to select a factor to be used in determining a network switch (column 5, line 55 – column 6, line 12)).

(Claim 25 discloses) the wireless network access card of claim 15, wherein the dynamic switching module is operable to dynamically switch network protocols based on performance data and input from a user regarding one or more performance factors to be used in determining whether to dynamically switch between network protocols (Rusch shows the network switch is based on the network data and user preferences (column 7, lines 1-6)).

(Claim 26 discloses) the wireless network access card of claim 25, wherein the input received from the user regarding one or more performance factors comprises at least one of: a selection from a set of performance factors of one or more performance

factors to be used in determining whether to dynamically switch between network protocols; and a ranking of one or more performance factors (Rusch shows the user is able to select a factor to be used in determining a network switch (column 5, line 55 – column 6, line 12)).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 8, and 15 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Gillis whose telephone number is (571)272-7952. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian J Gillis  
Examiner  
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